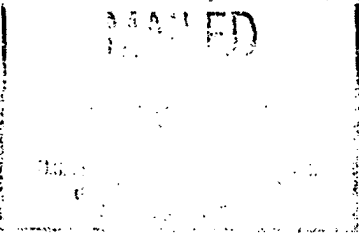


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL C. SCOGGIE, MICHAEL E. KACABA,
DAVID A. ROCHON, and DAVID M. DIAMOND



Application 09/401,939
Technology Center 3600

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This Image File Wrapper (IFW) application was electronically received at the Board of Patent Appeals and Interferences on November 16, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

The Appellants filed an Information Disclosure Statement (IDS) pursuant to 37 C.F.R. § 1.97, on March 6, 2001. The Examiner has failed to acknowledge the IDS. It is imperative that the Examiner consider the IDS and attached PTO-1449. *See the Manual of Patent Examining Procedure (MPEP) § 609.05(b)*. Correction is required.

Also, the Appellants filed a Petition pursuant to *MPEP* § 708.02 on September 23, 1999 requesting special status. There is no indication on the written record that a response to the Petition was ever made of record. For clarification,

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and before further prosecution can ensue at the Board, a response is deemed necessary.

Further review has revealed that the Appellants filed a Terminal Disclaimer on September 16, 2005. There is no indication by the Examiner or assigned Technology Center Paralegal that this Terminal Disclaimer was approved. Correction is required.

Finally, the Appeal Brief, received November 10, 2006, contains reference to a dictionary term that is technically considered to be evidence (see Appeal Br. 15). This dictionary term should be included along with a copy of said term in the Evidence Appendix Section of the Appeal Brief. *See MPEP* § 1205.02

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- (1) to consider the PTO-1449 form received March 6, 2001;
- (2) to acknowledge and properly respond to the Petition received September 23, 1999; have response made of record, and a copy mailed to Appellants;
- (3) to acknowledge and properly respond to the Terminal Disclaimer received September 16, 2005; have response made of record, and a copy mailed to Appellants;

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(4) to instruct Appellants to file a Paper adding the abovementioned reference to the evidence Appendix; and

(5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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